

February 17, 2004

VIA HAND DELIVERY

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

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COMMISSION

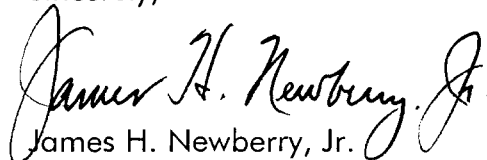
RE: Southeast Telephone, Inc.
Case No. 2003-00115

Dear Mr. Dorman:

Enclosed please find an original and eleven copies of Kentucky ALLTEL's Interconnection Agreement and an original and eleven copies of the Petition for Confidential Treatment of Kentucky ALLTEL Petition for Reconsideration. An unredacted copy of the Petition for Reconsideration is being filed under seal in the enclosed envelope.

Please return date stamped copies to me in the enclosed self-addressed stamped envelope. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to call.

Sincerely,


James H. Newberry, Jr.

Enclosures

Interconnection Agreement (original and eleven copies)
Petition for Confidential Treatment
of Kentucky ALLTEL Petition for Reconsideration (original and eleven copies)
Petition for Reconsideration (original filed under seal)
SASE



Mr. Thomas Dorman
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cc: Jonathon N. Amlung, Esq. (w/enclosures)
Steve Rowell, Esq. (w/enclosures)
30310814.5

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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Petition of Southeast Telephone, Inc., for)
Arbitration of Certain Terms and)
Conditions of the Proposed Agreement with)
Kentucky ALLTEL, Inc., Pursuant to the)
Communications Act of 1934, as amended)
by the Telecommunications Act of 1996)

No. 2003-00115

PETITION FOR RECONSIDERATION

On December 19, 2003, the Kentucky Public Service Commission ("Commission") issued its Arbitration Order in this matter ("Arbitration Order") requiring Kentucky ALLTEL, Inc. ("Kentucky ALLTEL") to provide Southeast Telephone, Inc. ("SETel") use of Kentucky ALLTEL local switching on an unbundled basis. The Arbitration Order thereby allowed SETel to purchase the unbundled network element ("UNE") platform from Kentucky ALLTEL at rates that would equate to an approximate fifty percent reduction of revenues to Kentucky ALLTEL associated with such services.

The Commission ordered Kentucky ALLTEL to provide use of its switch in spite of and without consideration of the unrefuted evidence that SETel has its own switch in Lexington, Kentucky (the heart of Kentucky ALLTEL's service territory) and, therefore, is not impaired without use of Kentucky ALLTEL's switch. The unchallenged evidence demonstrated that voice calls were actually being processed by SETel's switch from as far away as Pikeville, Kentucky (just under 200 miles). Further, the switch manufacturer's guidelines and specifications of a company that services this specific SETel switch (Network Telco, Inc.) showed that, if necessary, upgrades to increase the voice capability of SETel's switch would cost a maximum of approximately [REDACTED]. Indeed with respect to the voice grade capability and enhancement capability of SETel's switch, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The uncontroverted evidence demonstrated that SETel's type of switch supports converged wireline, wireless, and IP networks.

Significantly, in the Arbitration Order, the Commission, without analysis of any of the evidence described above, incorrectly applied only the FCC's Triennial Review Order ("TRO") presumptions and found that SETel was not impaired with respect to enterprise market customers but was impaired without use of Kentucky ALLTEL's switching as to mass market customers. (Arbitration Order at 6-7.) The Commission made its determination with respect to mass market customers contingent upon its ultimate determination in the nine-month TRO proceeding (Arbitration Order at 7) that it is conducting and expects to conclude on or around April 26, 2004 (*See*, Case No. 2003-00397).

The Arbitration Order initially required the parties to file an interconnection agreement within thirty days of the date of the Arbitration Order. However, as the parties were unable to agree on the appropriate division (or "cross-over") between mass market and enterprise market customers, the parties sought clarification of the Arbitration Order by filing a joint motion on January 26, 2004 and briefs outlining their positions on the cross-over issue. Thereafter, the Commission issued its Order on February 6, 2004 ("Clarification Order") rejecting the FCC's transitional rule providing that four DS0 lines is the cross-over between mass market and enterprise market customers. However, the Commission failed in its Clarification Order to

provide the parties any direction as to what the dividing line or cross-over between mass market and enterprise market customers should be. (Clarification Order at 4-5.) The Commission expressly declined to make such a determination, stating that it would do so in the context of the pending nine-month TRO proceeding. (Clarification Order at 5.) Additionally, the Commission ordered the parties to file their interconnection agreement ten days after the date of the Clarification Order. Although the parties will be filing an interconnection agreement in order to comply with the Clarification Order, they recognize that the interconnection agreement is vague and does not set forth a distinction between mass market and enterprise market customers. As the proposed interconnection agreement, like the Commission's Clarification Order, is vague and uncertain as to this important distinction, it should be reconsidered.

Additionally, Kentucky ALLTEL intends to appeal the Arbitration Order, the Clarification Order, and any order approving the interconnection agreement to the appropriate court immediately following any approval of the filed agreement by the Commission and will seek an immediate stay of these Orders and interconnection agreement. While Kentucky ALLTEL anticipates being successful in obtaining a stay and reversal as a result of these appeals, in the event it is not and the parties are required to implement the interconnection agreement, the lack of agreement regarding the distinction between mass market and enterprise market customers will obviously result in confusion and disagreement between the parties. Based on the Commission's failure to determine the cross-over between mass market and enterprise market customers, SETel now contends that it may order an unlimited number of DS0 lines per customer. SETel's proposal will result in customer confusion and harm in addition to irreparable harm to Kentucky ALLTEL, because the Commission's subsequent required determinations in the nine-month TRO proceeding as to the appropriate cross-over from mass market to enterprise

market customers will impact SETel's customers to the extent that they exceed the Commission's nine-month TRO cross-over determination.

Just as SETel has argued before this Commission, various new entrants tried to convince the FCC to remove or not to impose the four line cross-over even on a transitional basis prior to state commission determination of the cross-over issue in the nine-month proceedings. The FCC rejected this argument soundly because the FCC recognized the customer harm and confusion that would occur. The FCC acknowledged that not imposing a cross-over at this point and allowing carriers such as SETel to place orders between the date of the TRO until the conclusion of the nine-month proceedings would result in some customers ultimately being categorized as enterprise where they had previously been treated as mass market customers. To avoid this customer confusion and harm, the FCC reimposed a four line DS0 cross-over between mass market and enterprise market customers at least until the states made their determinations. (TRO at ¶497.) The Kentucky Commission should have recognized that between now and April of 2004, when the Kentucky nine-month TRO proceeding is concluded, the Commission, like the FCC, should have recognized the transitional four DS0 line cross-over between mass market and enterprise market customers.¹

Furthermore, the Court of Appeals for the D.C. Circuit ("D.C. Circuit Court) heard argument on January 28, 2004 in the FCC's defense of the TRO. The D.C. Circuit Court is expected to rule soon, and if it decides this appeal consistent with its criticism of the FCC during the argument and with its prior reversal of the FCC's earlier unbundling rules, the TRO will be substantially reversed. This Commission's Clarification and Arbitration Orders are entirely dependent on continued validity of the TRO as the Commission failed and refused to rule based

¹ It must also be noted that while Kentucky ALLTEL argues that the Commission erred in finding that as a matter of law the FCC only imposed a four DS0 line cross-over in the top fifty MSAs (Clarification Order at 5), it is undeniable that the Commission's decision in the Clarification Order to reject the applicability of the FCC's cross-over rule is wholly without any factual basis as the record in this proceeding did not address this issue.

on the evidence Kentucky ALLTEL presented that was unrefuted and that clearly demonstrated that SETel itself is not impaired. The Commission's Orders should not be allowed to be effective, nor should any portion of an interconnection agreement between Kentucky ALLTEL and SETel be allowed to be effective that relies entirely on these Orders while such substantial doubt exists with respect to the continued validity and effectiveness of the TRO. Otherwise, customer confusion and harm and irreparable harm to Kentucky ALLTEL will occur.

Indeed, since the release of the Commission's Clarification Order on February 6, 2004, criticism of the FCC's TRO has been growing. Many observers are predicting changes in the TRO after the D.C. Circuit Court releases its decision, which is expected in the near future. One source reported as follows:

[T]he [D.C. Circuit Court] indicated the FCC's decision to let states determine whether competitive carriers would be "impaired" from competing without certain unbundled network elements was *inappropriate...While there appears to be little doubt that states will not have the authority established in the TRO, whether the court remands the case back to the FCC or establishes new guidelines in a ruling remains in doubt....*Meanwhile, state commission staffs throughout the U.S. are working hurriedly to conduct TRO proceedings that are supposed to be completed this summer. *Much of this work may go for naught....*If the appeals court makes its decision as quickly as it hears oral arguments in the case, most industry officials believe a ruling will be announced in the spring. (Emphasis added.) ("Changes in TRO Expected after Court Hears Arguments," Telephony Online.com, Jan. 29, 2004.)

This Commission, regardless of its many duties imposed by the Telecommunications Act of 1996, is nonetheless charged with protecting end users pursuant to Kentucky statutes. (*See*, K.R.S. §§278.020 and 278.040.) In exercising its state authority, this Commission should reconsider its decision in the Clarification Order (as well as the Arbitration Order) and stay their effectiveness at least as they relate to requirements of unbundled switching and UNE platform.

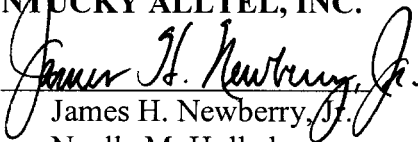
WHEREFORE, Kentucky ALLTEL requests that this Commission reconsider and stay the Clarification Order (and on its own initiative it may reconsider or stay the Arbitration Order),

at least to the extent as it relates to unbundled switching and UNE platforms and that it grant all other necessary and appropriate relief to which Kentucky ALLTEL is entitled.

Dated this 17th day of February, 2004.

Respectfully submitted,

KENTUCKY ALLTEL, INC.

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